

### REMARKS

This Application has been carefully reviewed in light of the Office Action mailed October 16, 2006. At the time of the Office Action, Claims 1-15 were pending in this Application. Claims 1-15 were rejected. No claims have been amended. Claims 16-20 have been cancelled due to an election/restriction requirement. Applicant respectfully requests reconsideration and favorable action in this case.

#### **Rejections under 35 U.S.C. § 102**

Claims 1-3, 5 and 11 were rejected by the Examiner under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No 4,385,630 issued to Ronald O. Gilcher et al. ("*Gilcher*"). Applicants respectfully traverse and submit the cited art does not teach all of the elements of the claimed embodiment of the invention.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). Furthermore, "the identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co. Ltd.*, 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989). Applicants respectfully submit that the art cited as anticipatory by the Examiner cannot anticipate the rejected Claims, because the cited art does not show all the elements of the present Claims.

Applicants believe that the Examiner is ascribing an inappropriate meaning to the term "association device." The specification and figures show an association device, 18, and discuss various embodiments of such a device. While Applicants do use this term broadly to encompass a variety of association devices, Applicants nevertheless draw a distinction between the association device and peristaltic pump, 24. In particular, throughout the specification, association device 18 and its components, such as elements 20, 21 and 22 (*see e.g.* Fig. 3), are consistently described as one feature of a bag system. Peristaltic pump 24 and its components 25 and 26 are consistently described a separate, second feature of the bag system. At no point does the current specification indicate that the peristaltic pump or any part the peristaltic pump is an association device. This is true even though the specification

does describe association devices combining different features, such as the combined connector and association device of Figure 4.

Thus, it is clear from the specification that the “association device” does not include a peristaltic pump or any component thereof. Nevertheless, the Examiner cites the roller (‘8’), pump platten (26’) and pump (24’) of Gilcher as corresponding to the association device in Claim 1. (Applicants have used the ‘ designation with reference numerals from Gilcher to avoid confusion with the reference numerals of the present specification.) The current specification draws a clear and consistent distinction between association device 18 and its own roller (25), platten (26) and pump head (24). Thus it is inappropriate for the Examiner read the claim term “association device” to include these identical pump components in Gilcher. Applicants have made it clear in the specification that an association device is not the same as the peristaltic pump and its components.

The Examiner’s interpretation of Gilcher is also incompatible with the claim language. The Examiner has identified connector 15’ in Gilcher as the connector and pump 24’ as the association device. The Examiner has identified the first flexible tube in Gilcher as 40’. The Examiner has also identified the second flexible tube in Gilcher as 18’. This identification of the second flexible tube is incomplete. The second flexible tube, as claimed must provide fluid communication between the solution bag and the collection bag. Tube 18’ connects only the solution bag 22’ with the collection device 14’. Tubes 18’ and 40’ together would be required to connect solution bag 22’ with collection bag 38’. Thus, the second flexible tube in Gilcher, if it exists at all must be the combination of tube 18’ and tube 40’. This combination must include the connector 15’ and additionally passes twice over the peristaltic pump 24’, once as tube 18’ and once as tube 24’.

The claim requires the association device to “form a loop with the second flexible tube between the association device and the connector... .” Given that the connector 15’ is part of the second flexible tube, assuming the combination of tube 18’, tube 40’ and connector 15’ in Gilcher is a second flexible tube, the Examiner has not explained how a loop is formed with the second flexible tube between the association device and the connector.

For the reasons set forth above, Gilcher fails to disclose at least one element of Claim 1. Accordingly it cannot anticipate Claim 1 or any of the other pending claims, all of which depend on Claim 1. Applicants request withdrawal of this rejection.

**Rejections under 35 U.S.C. §103**

Claim 12 was rejected under 35 U.S.C. §103(a) as being unpatentable over *Gilcher*. Applicants respectfully traverse and submit the cited art, even if proper, which Applicants do not concede, does not render the claimed embodiment of the invention obvious.

Claim 4 was rejected under 35 U.S.C. §103(a) as being unpatentable over *Gilcher* in view of U.S. Patent No. 4,558,996 issued to Harold D. Becker ("*Becker*"). Applicants respectfully traverse and submit the cited art combinations, even if proper, which Applicants do not concede, does not render the claimed embodiment of the invention obvious.

Claims 6-8 were rejected under 35 U.S.C. §103(a) as being unpatentable over *Gilcher* in view of U.S. Patent No. 5,309,604 issued to Eric C. Poulsen ("*Poulsen*"). Applicants respectfully traverse and submit the cited art combinations, even if proper, which Applicants do not concede, does not render the claimed embodiment of the invention obvious.

Claims 9-10 were rejected under 35 U.S.C. §103(a) as being unpatentable over *Gilcher* in view of U.S. Patent No. 5,868,696 issued to Richard C. Giesler et al. ("*Giesler*"). Applicants respectfully traverse and submit the cited art combinations, even if proper, which Applicants do not concede, does not render the claimed embodiment of the invention obvious.

Claim 13 was rejected under 35 U.S.C. §103(a) as being unpatentable over *Gilcher* in view of U.S. Patent No. 5,215,450 issued to Yehuda Tamari ("*Tamari*"). Applicants respectfully traverse and submit the cited art combinations, even if proper, which Applicants do not concede, does not render the claimed embodiment of the invention obvious.

Claim 14 was rejected under 35 U.S.C. §103(a) as being unpatentable over *Gilcher* in view of U.S. Patent No. 4,596,657 issued to Leonard A. Wisdom ("*Wisdom*"). Applicants respectfully traverse and submit the cited art combinations, even if proper, which Applicants do not concede, does not render the claimed embodiment of the invention obvious.

Claim 15 was rejected under 35 U.S.C. §103(a) as being unpatentable over *Gilcher* in view of U.S. Patent No. 6,113,554 issued to Ronald O. Gilcher et al. ("*Gilcher '554*"). Applicants respectfully traverse and submit the cited art combinations, even if proper, which Applicants do not concede, does not render the claimed embodiment of the invention obvious.

In order to establish a *prima facie* case of obviousness, the references cited by the Examiner must disclose all claimed limitations. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974). Furthermore, according to § 2143 of the Manual of Patent Examining Procedure, to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

While Applicants do not admit that any of the other references cited are appropriate to combine with Gilcher, none of the cure the defects of Gilcher mentioned above in the discussion of anticipation. Accordingly, Gilcher fails to teach or suggest at least one element of Claims 4, 6-8, 9-10 and 12-15. Applicants request withdrawal of this rejection.

### CONCLUSION

Applicants have made an earnest effort to place this case in condition for allowance in light of the amendments and remarks set forth above. Applicants respectfully request reconsideration of the pending claims.

Applicant encloses a Petition for Extension of Time for two months and authorizes the Commissioner to charge the amount of \$450 to Deposit Account No. 50-2148 of Baker Botts L.L.P. Applicant believes no additional fees are due, however the Commissioner is hereby authorized to charge any additional fees necessary or credit any overpayment to Deposit Account No. 50-2148 of Baker Botts L.L.P in order to effectuate this filing.

If there are any matters concerning this Application that may be cleared up in a telephone conversation, please contact Applicants' attorney at 512.322.2580.

Respectfully submitted,  
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Date: March 16, 2007

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